165-168

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 160.

ALFRED CLARKE, PLAINTIFF IN ERROR,

vs.

C. W. MOTT ET AL.

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

FILED AUGUST 15, 1894.

(15,669.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 8, 1896.

1 In the Superior Court of the City and County of San Francisco, Dep't 10.

C. W. MOTT *et als.*
vs.
ALFRED CLARKE. } No. 2023.

Specifications of Error and Prayer for Reversal.

Be it remembered this action was commenced on October 2nd, 1891, by filing a petition in this court.

On the same day a mutilated portion of an attachment bond was filed in said case.

Said bond was never approved by the judge.

On Oct. 6th, 1891, the respondent filed and served an objection to said bond as follows:

In the Superior Court of the City and County of San Francisco, Dep't 10.

In Re ALFRED CLARKE, Attacked as Insolvent. No. 2023.

The petitioners will please take notice that the respondent excepts to the sufficiency of the sureties of the petitioners on the bond given by them in these proceedings.

ALFRED CLARKE, *Respondent.*

(Endorsed:) No. 2023. In the superior court of the city and county of San Francisco, State of California. In the matter of Alfred Clarke. Notice of exception to the sureties. Filed Oct. 7th, 1891. Wm. J. Blattner, clerk, by John H. Harney, deputy clerk.

2 Received a copy of the within this 6th day of Oct., 1891.
H. W. HUTTON,
Att'y for the Petitioners.

No other bond was ever filed upon this exigency.

On Oct. 2nd, 1891, an order was signed as follows, and no other order or process was issued:

"*Order to Show Cause.*

"In the Superior Court of the City and County of San Francisco, State of California.

"In the Matter of ALFRED CLARKE, in Involuntary Insolvency.

"Upon reading and filing *of* the petition of Charles W. Mott, Henry J. Wicker, W. R. Birmingham, F. M. Hathaway, Herman Hermansen, and S. Merrill, and good cause appearing therefore—

"It is ordered that Alfred Clarke be and appear before this court,

at the court-room thereof, in the city and county of San Francisco, on the 14th day of October, 1891, at 10 o'clock a. m. of said day, then and there to show cause, if any he can, why he should not be adjudged an insolvent debtor and a surrender of his estate be made for the benefit of his creditors in the manner required of insolvent debtors.

"And it is furthered ordered that until the further order of this court the said Alfred Clarke be, and he is hereby, forbidden to transfer any property and is enjoined from collecting or receiving any debts; and the debtors of the said Alfred Clarke are hereby forbidden to pay any debts to the said Alfred Clarke or to deliver to him any property belonging to him or to any person, firm, or corporation for his use.

"WALTER H. LEVY,
"*Judge of the Superior Court.*

"Dated October 2nd, 1891.
"Filed October 15th, 1891."

3 This order was filed Oct. 15th, 1891, and was not served after filing.

On Nov. 7th, 1891, respondent objected to the jurisdiction of the court on the ground of absence of summons. The objection was overruled and subsequent proceedings were had, and on May 18th, 1892, the respondent was adjudged insolvent.

Respondent claims that in the above proceedings he has been deprived of liberty and property without due process of law and denied by the State the equal protection of the law.

Respondent specifies the errors on which he will rely:

(1.) That the judgment complained of is null and void for want of jurisdiction and the court never obtained jurisdiction of his person, and therefore he has not been accorded due process of law.

(2.) That said judgment is made in violation of the XIVth article, United States Constitution, and section 1979 of Revised Statutes of United States.

Wherefore the respondent prays that the said judgment may be reversed.

This paper is made and filed *nunc pro tunc* as of May 10th, 1894, by leave of the court for good cause shown.

ALFRED CLARKE,
Respondent and Plaintiff in Error.

The foregoing bill of exceptions is settled and allowed and authenticated as and for the transcript on writ of error from the United States Supreme Court to this court, as provided by law.

WALTER H. LEVY, *Judge.*

July 14th, 1894.

Endorsed: 2023, 10. (Title of court and cause.) Specifications of error and prayer for reversal and authentication by the judge. Filed *nunc pro tunc* as of May 10th, 1894. M. C. Haley, clerk, by Wm. H. Lyman, deputy clerk.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the superior court of the city and county of San Francisco, State of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said superior court, before you, between C. W. Mott and others, plaintiff in your court (defendants in error here), and Alfred Clarke, defendant in your court and plaintiff in error here, a manifest error hath happened, to the great damage of the said defendant and plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, District of Columbia, within sixty (60) days from the date hereof, in the said U. S. Supreme Court *Court* to be there and then held, that, the record and proceedings aforesaid be- inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

5 Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11th day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

[SEAL.]

W. J. COSTIGAN,
Clerk of the United States Circuit Court
for the Nineth Circuit.

The above writ of error is hereby allowed.

J. C. B. HEBBARD,
Presiding Judge.

Endorsed: Alfred Clarke, plaintiff in error, *vs.* C. W. Mott *et als.*, defendants in error. Writ of error to the superior court of the city and county of San Francisco in the action brought by C. W. Mott *et als. vs.* A. Clarke, No. 2023, and erroneously by Mott *et als. re* Clarke, involuntary insolvent. Filed May 11th, 1894. M. C. Haley, clerk, by Wm. H. Lyman, deputy clerk.

6 UNITED STATES OF AMERICA, *ss:*

To C. W. Mott, H. J. Wicker, W. R. Birmingham, F. M. Hathaway, Herman Hermansen, S. Merrill, Jacob Bertz, The Sather Banking Company, and The Pacific Manufacturing Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the superior court of the city and county of San Francisco, State of California, wherein Alfred Clarke is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgments in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. C. B. Hebbard, presiding judge of the superior court of the city and county of San Francisco, this 11th day of May, A. D. 1894, and of the Independence of the United States the one hundred and 18th.

J. C. B. HEBBARD,
[SEAL.] *Presiding Judge.*

(Endorsed:) Service of the within admitted on behalf of C. W. Mott, Herman Hermansen, H. J. Wicker, W. R. Birmingham, F. M. Hathaway, and S. Merrill, at San Francisco, Cal., this 10th day of May, 1894. W. T. Baggett, att'y for said parties. Service received, May 12th, 1894, at San Francisco, for Pacific Manufacturing Co. Warren Olney, attorney. E. J. McCutchen, att'y for Jacob Bertz. Page, Eells & Wheeler, att'ys for Sather Banking Co. In the Supreme Court of the United States. Alfred Clarke, plaintiff in error, *vs.* C. W. Mott *et als.*, the defendants in error. Citation. Filed May 12th, 1894. M. C. Haley, clerk, by Wm. H. Lyman, deputy clerk.

7 *The Answer of the Judges of the Superior Court of the City and County of San Francisco.*

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, contained in a certain schedule, as follows:

1. Transcript of record, authenticated, 1, 2, and 3;
2. Bill of exceptions, authenticated, 1, 2, and 3;
3. Specifications of errors, filed May 10th, 1894, 1, 2, and 3;
4. Writ of error, 4 and 5;
5. Citation, 6;
6. Evidence of service thereof, 6;
7. Answer of the judges, 7;
8. Certificate of the clerk, 7;

we certify, under the seal of our said court, to the Supreme Court

of the United States, within mentioned, at the day and place within, as within we are commanded.

[Seal Superior Court, City & County of San Francisco, Cal.]

M. C. HALEY, *Clerk*,
By WM. H. LYMAN,
Deputy Clerk.

A. C. SEARLE,
Attorney for Plaintiff.
ALFRED CLARKE,
P'ff, 213 *Larkin.*

[Endorsed:] In the Supreme Court of the U. S. Transcript on writ of error. Alfred Clarke, p'ff in error, *v.* C. W. Mott & *als.*, def'ts in error. In error to the superior court of the city and county of San Francisco.

Endorsed on cover: Case No. 15,669. California, San Francisco city and county superior court. Term No., 160. Alfred Clarke, plaintiff in error, *vs.* C. W. Mott *et al.* Filed August 15th, 1894.